

REMARKS

Entry of the claim amendments presented above, and favorable reconsideration and allowance of this application are requested.

As an initial "housekeeping" matter, it was noted that prior claims 51 and 52 were inadvertently misnumbered and should have been presented as new claims 48 and 49, respectively, when the Amendment of July 7, 2004 was filed. In order to ensure integrity of the official record, the claim amendment instructions above request cancellation of claims 48-52. New claims 53 and 54 have thus been presented and are substantively identical to prior inadvertently numbered claims 51 and 52.

Accordingly claims 30-47 and 53-54 are presently pending in this application for which favorable reconsideration is requested.

By way of the amendment instructions above, independent claims 30 and 41 have been revised so as to emphasize that it is a ***solid*** biopolymeric material that is formed, and that the reaction between the blowing agent and the titrant occurs concurrently during formation of such solid biopolymeric material ***in response to mixing*** of the two aqueous solutions so as to impart a cellular foam structure thereto. Support for the foamed biopolymer being a solid material may be found at, for example, page 8, lines 23-35. Support for the concurrent evolution of gas concurrently during reaction of the proteinaceous material of one solution with the other solution in response to mixing of the two solutions may be found at, for example, page 3, lines 4-6 and the Examples, particularly Example 1 at page 11, lines 1-2 ("A foam-like material was formed *immediately* that expanded.")

1. Renewed Request to Consider Information Supplied with Information Disclosure Statement of July 7, 2004

Applicants' undersigned representative hereby requests that the publications listed on the form PTO-1449 submitted with the response of July 7, 2004, which

publications were specifically requested by the Examiner in his Official Action dated March 21, 2004, be considered and made of record.

In this regard, the Examiner notes at the bottom of page 4 in the most recent Official Action dated October 26, 2004 that: "The **US** Patents recited on PTO form 1449 filed 7/7/04 are not of record." (emphasis added). Thus, it is understood from such statement that the non-US Patent publications recited on the PTO form 1449 filed on July 7, 2004 **are** of record herein.

The reason why the US Patents cited on the PTO form 1449 have not been made of record is not understood, since the applicants fully complied with Rule 97(c). Specifically, when submitted on July 7, 2004, the US patents were listed (i.e., on PTO form 1449), and a copy of each listed Patent was supplied to the Office. Moreover, the fee required by Rule 97(c) was paid. That the Office actually received such publications and fee is evidenced by the attached copy of the undersigned's postcard receipt.

In the interim period, of course, Rule 98 was been amended to eliminate the requirement in paragraph (a)(2)(i) for a copy of each U.S. patent or U.S. patent application publication listed in an IDS in a patent application regardless of the filing date of the application. Please see in this regard, the excerpt from the Official Gazette Notices of October 12, 2004 at:

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/1_98fr.htm

Thus, since applicants have complied with all applicable rules, the US patents listed on the previously filed PTO form 1449 must be considered and made "of record". A duplicate copy of the PTO form 1449 is attached so the Examiner can evidence such consideration by placing his initials beside **all** listed publications (i.e., including the non-Patent publications already apparently "of record") and returning the same to the undersigned.

2. Response to 35 USC §112 Rejection

Claims 41-52 attracted a rejection under 35 USC §112, first paragraph, as allegedly not being enabled by the originally filed specification. Specifically, the Examiner rejects claims 41-52 under such statutory provision for the reason that the specification is enabling only for a first solution of a proteinaceous material and a blowing agent and a second solution comprising a di- or polyaldehydes and a titrant. Thus, the Examiner concludes that the specification is not enabling for claims which embrace a blowing agent in the second solution and a titrant in the first solution, arguing that: "Nowhere in the disclosure do applicants disclose alternative solutions to those cited [in pages 3-7 of the specification]." (Official Action dated October 26, 2004 at page 4, lines 17-18.)

Applicants emphatically disagree.

In this regard, the Examiner has apparently overlooked the disclosure appearing in the originally filed specification at page 5, line 24 bridging page 6, line 6. There it is disclosed that:

"*[O]ne* of the components of the mixture may include a bicarbonate compound while the *other* component of the mixture may be provided with an acidic titrant in an amount sufficient to cause carbon dioxide gas to be evolved when the two components are mixed together."

At page 6, lines 5-8 and 16-18, it is disclosed that, when the two-part liquid system having Parts A and B is employed, it is preferred that the bicarbonate be included in Part A and the titrant be included in Part B. However, such a stated preference does not trump the alternative expression earlier at page 5, line 25 bridging page 6, line 6. Indeed, from such an expression together with the stated preference,

one of ordinary skill in this art would be more than enabled to place the blowing agent and the titrant in **either** solution of a two-part liquid system.

In view of the above, therefore, claims 41-49 [OA 41-52] are entirely enabled by the originally filed specification and thus withdrawal of the rejection advanced under 35 USC §112, first paragraph is in order.

3. Response to Art-Based Rejections

Claims 30 and 38 attracted a rejection under 35 USC §102(e) based on Nussinovitch, while claims 30-52 attracted a rejection advanced under 35 USC §103(a) as allegedly being unpatentable over Nussinovitch in view of Wang and Fattman et al.

At the outset, applicants note that the Examiner is apparently now relying on the published PCT counterpart of Nussinovitch, namely, PCT/EP/94/00107 having a publication date of April 8, 1994, since its Example 1 is identical to that of the US Nussinovitch. Applicants still maintain that the US Patent to Nussinovitch is unavailable as a reference, and thus the comments below will assume that the rejections have been advanced on the basis of the earlier published Nussinovitch PCT document, namely, PCT/EP/94/00107. Hence, applicants will refer to Nussinovitch as meaning the PCT document for purpose of this response since the PCT publication appears to be available as a reference based on the present record.

Notwithstanding the above, applicants maintain that the present invention as claims is not anticipated by Nussinovitch, and is not rendered "obvious" based on Nussinovitch in combination with the secondary references to Wang and Fattman.

In this regard, it appears that the Examiner has not yet fully grasped the fact that the first and second aqueous solutions are in fact **separate** from one another and that the first aqueous solution includes the proteinaceous material and one of a blowing agent or a titrant. The second aqueous solution in accordance with the present

invention comprises a component reactable with the proteinaceous material of the first solution and the other of the blowing agent or the titrant. Thus, **concurrently** with the reaction between the proteinaceous material of the first solution with the reactable component of the second solution **in response to mixing** of the two solutions, the blowing agent and titrant will react to evolve a gas to impart a cellular foam structure to the otherwise solid proteinaceous biopolymeric material.

To the contrary, Nussinovitch forms a solid **non-cellular** material and **thereafter** contacts such solid non-cellular material with citric acid to form a foam-like cellular structure. Thus, Nussinovitch cannot anticipate the present invention under 35 USC §102(b) since there is no disclosure therein that the foam-like structure is achieved **concurrently** with the reaction of the proteinaceous material **in response to** mixing of the two aqueous solutions.

Thus, contrary to the Examiner's assertions, the cited Nussinovitch publication does not disclose the "solutions" as defined in the claims pending herein since nowhere does Nussinovitch suggest or disclose that the solutions may be merely mixed so as to achieve a reaction of the proteinaceous material to form a solid biopolymeric material **concurrently** while a blowing agent and a titrant react to simultaneously form a cellular structure therein. In other words, the present invention achieves a cellular biopolymeric material simultaneously during reaction whereas Nussinovitch teach first forming a solid non-cellular material followed by a treatment to render the same cellular. Nowhere does Nussinovitch teach or suggest that the therein disclosed material may be rendered cellular **concurrently** while a proteinaceous material is reacting to form a solid biopolymeric material.

The secondary references to Wang and Fattman are deficient for the reasons stated in our prior amendment dated July 7, 2004. Specifically, none of the references of record, including the Wang and Fattman references, disclose or remotely suggest a kit comprised of first and second aqueous solutions which contain the components as

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specified in the pending claims herein. Moreover, as acknowledged by the Examiner, Fattman teaches a hydrocolloid foam material. The components employed in the present invention, e.g., albumin and glutaraldehyde, are **solutions** and clearly do not constitute colloidal materials. Hence, for this reason also, an ordinarily skilled person would not be lead to the combination advanced by the Examiner.

The claims pending herein have been clarified to the extent that it is a solid biopolymeric material that is formed, and that the reaction between the blowing agent and the titrant occurs concurrently during formation of such solid biopolymeric material so as to impart a cellular foam structure thereto.

Withdrawal of all rejections advanced against the present application are believed to be in order. Such favorable action is solicited.

Respectfully submitted,

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